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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,040	10/09/2001	Robert S. Kody	5668SUS002	7546

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3M INNOVATIVE PROPERTIES COMPANY  
PO BOX 33427  
ST. PAUL, MN 55133-3427

EXAMINER
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THOMPSON, CAMIE S

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 12/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/974,040

Applicant(s)

KODY ET AL.

Examiner

Camie S Thompson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-15,17-32,36-38 and 45-49 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,16,33-35 and 39-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-15,17-21,25-28,30,31 and 45-49 is/are rejected.
- 7) ☒ Claim(s) 22-24 and 36-38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

1. Applicant's amendment and accompanying remarks filed October 16, 2003 have been acknowledged.
2. Examiner acknowledges amended claims 1, 5, 19, 25, 29, 30, 31, 46, 48 and 49.
3. Examiner acknowledges cancelled claims 3, 4 and 33-35.
4. The objection to the specification is withdrawn due to applicant's amended abstract.
5. The rejection of claims 1-3, 5-15, 17-33, 35 and 46-49 under 35 U.S.C. 102(e) as being anticipated by Perez et al., U.S. Patent Number 6,331,343 is withdrawn due to applicant's amended claims.

### *Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-2, 5-11 and 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Heffelfinger, U.S. Patent Number 6,582,810.

The Heffelfinger reference discloses a breathable, elastic film. The film of the reference comprises a coextruded, monoaxially oriented microfiber layer that is stretched in the

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perpendicular direction as per instant claims 1-2 and 6 (see column 1, lines 55-68, column 6, lines 18-24 and Figures 1-3 and 6). Additionally, the reference discloses that the film comprises two opposing surface wherein one surface is hydrophilic and the other surface is hydrophobic as per instant claims 1 and 7 (see column 10, lines 26-44 and column 6, line 65-column 7, line 1). The reference also discloses that the microfiber layer comprises a polypropylene as per instant claims 8 and 11 (see column 3, lines 9-13 and column 4, lines 28-64). It is disclosed in column 6, lines 25-41 that the non-microfiber layer comprises an elastomeric material as per instant claim 9. Also, the reference discloses in Figure 6 that the film comprises two layers as per instant claims 10 and 17. Column 7, lines 42-50 of the reference discloses that the film thickness is about 5-50 microns as per instant claim 18. It is also disclosed in column 9, lines 46-64 that the breathable film may be laminated to one or more fibrous webs such as a meltblown web as per instant claims 19 and 20.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 12-15, 21, 25-28, 30-31 and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heffelfinger, U.S. Patent Number 6,582,810.

The Heffelfinger reference discloses a breathable, elastic film. The film of the reference comprises a coextruded, monoaxially oriented microfiber layer that is stretched in the

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perpendicular direction as per instant claims 1 and 27 (see column 1, lines 55-68, column 6, lines 18-24 and Figures 1-3 and 6). Additionally, the reference discloses that the film comprises two opposing surface wherein one surface is hydrophilic and the other surface is hydrophobic as per instant claim 1 (see column 10, lines 26-44 and column 6, line 65-column 7, line 1). The reference also discloses that the microfiber layer comprises a polypropylene as per instant claims 15, 25 and 28 (see column 3, lines 9-13 and column 4, lines 28-64). It is disclosed in column 6, lines 25-41 that the non-microfiber layer comprises an elastomeric material as per instant claims 13, 26 and 47. The Heffelfinger reference does not specifically disclose a nonmicrofiber layer sandwiched between two microfiber layers as per the instant claims. However, the Heffelfinger reference does disclose that the non microfiber layer may be laminated to one or more fibrous meltblown webs as shown in column 9, lines 46-65. With two fibrous meltblown webs, it would be expected that the film be sandwiched between the two fibrous webs so that the film is laminated to the webs as described in column 9 of the reference as per instant claims 12, 31-32, 45-46 and 49.

10. Claims 29, 32, 36-38 allowed.

11. Claims 22-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Response to Arguments***

10. Applicant's arguments with respect to claims 1-3, 5-15, 17-33, 35 and 46-49 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (703) 305-4488. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia H. Kelly, can be reached at (703) 308-0449. The fax phone number for the Group is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

CYNTHIA H. KELLY  
SUPERVISOR  
JAN 31 2010

